IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

OP.No. 12722 of 2000(M)

PETITIONER:

T.PRASANNAKUMARI AMMA,
PUTHANPURAKKAL THARAYIL,
PADINJATTEMURI, SOORANAD NORTH P.O.,
KOLLAM – 690 561.

BY ADV. SRI.M.V.THAMBAN

RESPONDENTS:
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1. **THE MANAGER,**
   R.K.U.P.SCHOOL, ANAYADI P.O.,
   KOLLAM DISTRICT.

2. **THE ASSISTANT EDUCATIONAL OFFICER,**
   SASTHAMCOTTA, KOLLAM DISTRICT.

3. **THE DIRECTOR OF PUBLIC INSTRUCTIONS,**
   THIRUVANANTHAPURAM.

4. **STATE OF KERALA, REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

5. **R.SANTHOSH,**
   WORKING AS PEON, R.K.V.U.P.SCHOOL,
   ANAYADI (P.O.), KOLLAM DISTRICT.

BY SR. GOVERNMENT PLEADER SMT. M.R. SREELATHA for R2 to R4
BY ADV. SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.M.R.RAJESH

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 04/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

ORDER ON C.M.P.NO.20855/2000 IN O.P.NO.12722/2000 M

CLOSED

4/09/2007 **SD/- S.SIRI JAGAN, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE REPRESENTATION DTD. 20/09/97 SUBMITTED BY THE PETITIONER BEFORE THE THIRD RESPONDENT.**

EXT.P2: **COPY OF ORDER K.DIS./60796/97/DPI/F4 DTD. 15/04/1998 ISSUED BY THE 3RD RESPONDENT.**

EXT.P3: **COPY OF LETTER NO.C-5028/98/L.DIS. DTD. 14/10/98 ISSUED BY THE 2ND RESPONDENT.**

EXT.P4: **COPY OF THE APPLICATION DTD. 18/11/98 SENT BY THE PETITIONER TO THE 1ST RESPONDENT.**

EXT.P5: **COPY OF REPRESENTATION DTD. 13/01/99 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.**

EXT.P6: **COPY OF REPRESENTATION DTD. 19/02/99 SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT.**

EXT.P7: **COPY OF REPRESENTATION DTD. 15/03/99 SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT.**

EXT.P8: **COPY OF APPLICATION DTD. 25/03/99 SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT.**

EXT.P9: **COPY OF COMPLAINT DTD. 29/04/99 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.**

EXT.P10: **COPY OF LETTER NO.F4-41269/99/DPI DTD. 15/06/99 ISSUED BY THE 3RD RESPONDENT.**

EXT.P11: **COPY OF JUDGMENT DTD. 20/09/99 IN O.P.23466/99 K BY THE HON'BLE HIGH COURT.**

EXT.P12: **COPY OF ORDER NO.K.DIS./F4/77771/DPI DTD. 14/02/2000 ISSUED BY THE 3RD RESPONDENT.**

6TH RESPONDENT'S EXHIBIT:

EXT.R6(A): **COPY OF APPOINTMENT ORDER WITH ENDORSEMENT EVIDENCING APPROVAL OF 2ND RESPONDENT.**

/TRUE COPY/

P.A.TO JUDGE

KSS

S. SIRI JAGAN, J.

O.P. NO. 12722 OF 2000 - M

Dated this the 4th day of September, 2007

J U D G M E N T

Petitioner in this original petition is the wife of late Vasudeva Kurup who had worked in the first respondent's school from 26.9.1966 till 21.2.1985. From 22.2.1985 onwards, he was working as a protected teacher in a Government school since there was reduction in staff strength in the present school. While working as such, he died on 11.11.1986. After the death of the said Vasudeva Kurup, the petitioner raised a claim for compassionate appointment under Rule 51B of Chapter XIVA of the Kerala Education Rules (for short 'the Rules') in the first respondent's school. Originally by Ext.P2 order, the Director of Public Instructions held that in recognition of her right under Rule 51B, the petitioner is entitled to be appointed as Peon in the first respondent's school in the next arising retirement vacancy. Ext.P2 order is dated 15.4.1998. It appears

that subsequently, a vacancy arose to which also the petitioner was not appointed. The petitioner took up the matter with the authorities. Being unsuccessful, the petitioner approached this court by filing O.P.No.23466 of 1999 seeking implementation of Ext.P2 order. This Court by Ext.P11 judgment in the said O.P. directed the Director of Public Instructions to consider the claim of the petitioner in accordance with law within the time frame prescribed therein. Pursuant thereto, Ext.P12 order has been passed by the Director of Public Instructions cancelling Ext.P2 order and rejecting the claim of the petitioner for compassionate appointment under Rule 51B, on the ground that the said Vasudeva Kurup was only a protected teacher working in a Government school and on his death, no Rule 51B claim can be admitted at the request of a dependent of the said Vasudeva Kurup who was not a member of the service of the first respondent's school. Ext.P12 order is under challenge in this writ petition, with a prayer for mandamus to implement Ext.P2.

2. The contentions of the petitioner are as follows:-

Firstly the petitioner would contend that Ext.P2 order has not been challenged by either the Manager or any other claimant. The authority, who passed Ext.P2 order himself, cannot, without any challenge in that, cancelled the same, that too in a petition filed by the petitioner seeking implementation of Ext.P2. Therefore, according to the petitioner, Ext.P2, having become final, was liable to be implemented. Second is that the finding in Ext.P12 that dependent of a protected teacher is not entitled to claim appointment under Rule 51B in the parent school is unsustainable.

3. In answer to these contentions, the first and fifth respondents as well as the learned Government Pleader would support Ext.P12. According to them, Ext.P2 is patently an unsustainable order in so far as the said Vasudeva Kurup being only a protected teacher working in a Government school at the time of his death, was not a member of the service of the parent school.

No Rule 51B claimant could be admitted at the instance of his dependent for compassionate appointment in the parent school. Counsel for the additional sixth respondent would further contend that she was working in the school ever since 2000 and it would be totally unjust to throw her out at this point of time, that too at the instance of a person who is not eligible for any Rule 51B claim, based on an unsustainable order Ext.P2.

4. I have considered the rival contentions in detail. The first question to be considered is whether in view of Ext.P2 order, the Director of Public Instructions could have passed Ext.P12 order cancelling Ext.P2 and taking a decision to the effect that since the husband of the petitioner was only a protected teacher, the petitioner is not entitled to claim appointment under Rule 51B in the first respondent's school.

5. At first blush, the argument of the petitioner would sound very attractive. Ext.P2 order was there from 15.4.1998 onwards. Nobody has challenged it and was in force till Ext.P12 order was passed. Attractive

though the argument may be, I do not think that an unsustainable claim should be upheld by this court on the basis of an illegal order, if, in law, no Rule 51B claim for appointment would arise on the death of a protected teacher working in a Government school. That being so, the primary question to be decided is whether the petitioner can sustain a claim for compassionate appointment in the parent school under Rule 51B, on the death of her husband while working as a protected teacher in a Government school, on being retrenched from service of the first respondent for want of vacancy on account of division fall. There have been several decisions against a protected teacher, on the point as to whether a protected teacher is entitled to service benefits in the parent school. I am saved from the task of drawing an analogy from those decisions for the purpose of this case in view of the fact that there is a decision directly on the point by a learned Judge of this Court in W.P(C) No.23408 of 2005 with which I respectfully agree. In that decision, the learned Judge

held that if a teacher is deployed in another school as a retrenched teacher and continues there without any threat of termination till his death or superannuation, as the case may be, it cannot be said that he will continue to hold a lien on the post held by him in his parent school. In that view of the matter, the learned Judge held that the dependent of a deceased retrenched teacher will not be entitled to claim the benefit of Rule 51B if the said employee dies in harness after his absorption in another school. In view of that position of law, despite Ext.P2, I am not inclined to interfere with Ext.P12 order in so far as the law is that the dependent of a protected teacher is not entitled to claim the benefit under Rule 51B of Chapter XIV-A of the Kerala Education Rules.

In that view, I do not find any merit in the writ petition and accordingly, the same is dismissed.

S. SIRI JAGAN,
Judge

Mbs/

S.SIRI JAGAN, J

O.P. NO. 12722 OF 2000 M

J U D G M E N T

DATED: 04-09-2007